

1           A     I don't know that I excluded the construction  
2 permits from this. I think it's poorly worded. My charge was  
3 let's see what we can do to get someone to make an offer on  
4 TV40.

5           Q     Well, do you recognize that you do use the term  
6 construction permit in parentheses about halfway down the --

7           A     I, I agree. It's, it's poorly worded there.

8           Q     Well, in fact at the time you wrote this note,  
9 Trinity had submitted to Raystay a proposal to buy the  
10 construction permits, had it not?

11          A     That's correct.

12          Q     And it had also submitted draft asset purchase  
13 agreements for those permits.

14          A     Yes.

15          Q     And it had also submitted in fact draft, draft FCC  
16 assignment applications.

17          A     I think this was because of the potential to  
18 purchase TV40. And if we would have been able to realize a  
19 proper price in our mind for the TV40, obviously the  
20 construction permits if they wanted them could have gone along  
21 with it. I didn't know there was any restriction on selling  
22 them.

23          Q     Well, are you saying that Raystay was not prepared  
24 to sell the construction permits, the five or any of the five  
25 construction permits to Trinity unless the sale also included

1 TV40?

2 A I believe that's a correct statement.

3 Q Well, would you turn back to TBF Exhibit 230 please.  
4 Do you have that?

5 A Yes, I do.

6 Q And do you see the second to last paragraph? This  
7 by the way is Mr. David Gardner's letter to George Sebastian  
8 of October 30, 1991. Toward the end of the second to last  
9 paragraph it says, "In the event that Trinity is not  
10 interested in the total Raystay LPTV package, we would  
11 entertain discussions regarding transferring any remaining  
12 construction permits to you at the nominal costs incurred in  
13 obtaining them." Do you see that?

14 A Yes.

15 Q Now was that not an offer by Raystay to sell any or  
16 whatever of the construction permits that Trinity might be  
17 interested in?

18 A That's certainly what David Gardner said.

19 Q And he was authorized to say that.

20 A I had asked both Lee Sandifer and David Gardner to  
21 develop any situation that made sense. Because we needed to  
22 not only find a way to utilize the construction permits but  
23 also to stop the losses of TV40. And I think this was within  
24 the realm of the charge that I gave him. It's not something I  
25 would probably have agreed to. Because I was interested in

1 selling TV40 if we could here. The construction permits, we  
2 sold one of them, and it was not an essential part of the  
3 network. Selling anymore unless they were all sold as a group  
4 would have defeated our purpose in trying to put the network  
5 together. So we had no real interest in parting out the, the  
6 construction permits, no.

7 Q Well, the one you sold you just referred to, that  
8 was the sale of the Red Lion permit --

9 A Yes.

10 Q -- to Mr. Grolman?

11 A Yes. And it covered an area that was already  
12 covered by TV40.

13 Q Covered in what respect by TV40?

14 A The coverage area of TV40 overlapped the, the York  
15 area.

16 Q Are you talking about over-the-air coverage?

17 A Yes. And the cable system in York would have been  
18 able to pick the signal up directly from TV40 if we would have  
19 used the cable system in York.

20 Q Was there a complete overlap of TV40 and --

21 A No, it was a partial overlap.

22 Q Well, why did you apply for York in the first place?

23 A There was --

24 MR. SCHAUBLE: Objection, Your Honor.

25 JUDGE CHACHKIN: I'll overrule the, I'll overrule

1 the --

2 MR. SCHAUBLE: Objection on, on the predicate, Your  
3 Honor. That it wasn't York that was originally --

4 JUDGE CHACHKIN: Oh, I see. Sorry. Sustained.

5 MR. EMMONS: Thank you.

6 BY MR. EMMONS:

7 Q Why did you apply for the Red Lion permit in the  
8 first place?

9 A We had a tower location there. And it, it seemed to  
10 fit into the plan. But as we tried to implement the plan, it  
11 really didn't do anything for us. The Lebanon and Lancaster  
12 sites covered much larger territories of, of viewers whereas  
13 the Red Lion really didn't.

14 Q So it's your testimony, Mr. Gardner, that TBF  
15 Exhibit 238 which is your note of December 3, 1991 is poorly  
16 worded in that it doesn't make clear that all you were  
17 authorizing anybody to talk to buyers about was sale of TV40  
18 and the construction permits gone with it rather than just the  
19 construction permits themselves?

20 A That's correct.

21 Q I see.

22 MR. EMMONS: Can I have a moment off the record,  
23 Your Honor.

24 JUDGE CHACHKIN: Yes.

25 (Off the record. Back on the record.)

1 BY MR. EMMONS:

2 Q Mr., Mr. Gardner, you've talked about Dennis  
3 Grolman. Am I correct that you first received an inquiry from  
4 Mr. Grolman around March or April of 1991?

5 A I don't recall the exact time. But that, that  
6 sounds like about the time.

7 Q And you, you delegated Mr. Sandifer to negotiate  
8 with Mr. Grolman?

9 A Yes. I talked with Mr. Grolman I believe once on  
10 the phone and ask him to put his intentions into a letter to  
11 me and he did. And then I turned the letter over to Mr.  
12 Sandifer to work with.

13 Q And you understood, did you not, from the  
14 discussions with Mr. Sandifer that what Mr. Grolman was  
15 initially interested in doing was buying the five low-power  
16 construction permits but not TV40?

17 A I don't remember that he was interested in buying  
18 anything except just the Red Lion construction permit.

19 Q You don't remember that in the initial period of Mr.  
20 Sandifer's discussions in the spring of 1991 that what Mr.  
21 Grolman was interested in was the acquisition of all five?

22 A I don't recall that at all, no.

23 Q If Mr. Sandifer was negotiating with Mr. Grolman for  
24 all five at that point, would Mr. Sandifer have been within  
25 his authorization to do that?

1           A     I believe Mr. Grolman only talked to me about the  
2 Red Lion construction permit. And I don't recall any talk  
3 about anything more than that. And I don't believe I  
4 authorized Lee Sandifer to do anything more than just that  
5 one.

6           Q     Now with respect to Mr. Shaffner, when did  
7 discussions with Mr. Shaffner begin?

8           A     Well, Mr. Shaffner had a cable system that he wanted  
9 us to purchase. It was adjacent to the Carlisle system. And  
10 he wanted to have us exchange TV40 as part of the payment. I  
11 don't recall exactly when it did start.

12          Q     Does April or March or April of 1991 sound about  
13 right?

14          A     Well, that sounds reasonable. I know we picked up  
15 and started negotiating with him as soon as Quality Family  
16 defaulted. So it apparently had to have been before August,  
17 yes.

18          Q     Now you say that what Mr. Shaffner was interested in  
19 was in acquiring TV40 in return for your acquiring from him  
20 his cable system.

21          A     That's correct. It wasn't a complete trade. It  
22 was -- we had to pay cash along with it.

23          Q     Sure. Now what interest, if any, did Mr. Shaffner  
24 express in the possibility of acquiring the low-power  
25 construction permits as well as TV40?

1           A     I don't think he had a whole lot of interest in it.  
2 He wanted to take TV40 and work with it. And he said that he  
3 might be interested in talking to us about the construction  
4 permits. But he was not very positive on that.

5           Q     But he did express some interest.

6           A     I don't believe he expressed interest. I believe it  
7 was more we said that we needed to resolve the construction  
8 permits. And if we sold TV40 and we didn't have the  
9 construction permits go along with it, then we had a large  
10 problem.

11          Q     Why did you have a large problem?

12          A     Well, there would be no way we could make a business  
13 plan that would work.

14          Q     I see. So, so TV40 then was essential to making  
15 these other five low-power stations work.

16          A     That's the way we looked at it, yes.

17          Q     And I take it then it was never -- consideration was  
18 never given to selling TV40 but retaining and building and  
19 operating the five other stations.

20          A     If we would have sold TV40 without the construction  
21 permits going with it, we would very likely have turned them  
22 in, yes.

23          Q     Now you were -- what was the status of your  
24 understanding with Mr. Shaffner in, as of October or November  
25 of 1991? Did you have an understanding?

1           A     Well, it's the same as it is today. We're still  
2 negotiating with Mr. Shaffner. He's been a very difficult  
3 person to work an arrangement with. I, I think we still have  
4 a situation there where it's possible that we'll sell TV40 to  
5 him. But it hasn't happened. So it was the same back then.  
6 He would keep us interested just enough that we felt there was  
7 possibilities here. And that's what he's doing today. He's  
8 very skillful at that.

9           Q     Well, you, you had a meeting -- you and Mr. Sandifer  
10 had a meeting with Mr. Shaffner sometime in October 1991, did  
11 you not, where you, where you talked price terms?

12          A     I -- yes, that's right.

13          Q     And that's, that's the meeting where there was  
14 discussion of the range of \$300,000 as a price for Mr.  
15 Shaffner to pay for --

16          A     That's correct.

17          Q     -- TV40.

18          A     Yes.

19          Q     And, and there was also some discussion at that  
20 meeting, was there not, of his possibly being interested in,  
21 in the other five permits, but he made no commitment to that  
22 effect.

23          A     That's correct.

24          Q     All right. Now -- and he told you, did he not, that  
25 his interest in acquiring TV40 was contingent upon his selling



1 his cable system to another company, wasn't that correct?

2 A Well, originally his interest was in exchanging it  
3 with us. When we determined that we were not interested in  
4 purchasing his cable system, then he did sell the cable system  
5 to another cable operator. And at that point, he said he was  
6 still interested in acquiring TV40, yes. And that's the  
7 situation as it is today.

8 Q Now you've stated that if I, if I understood you  
9 correctly that if you could not have sold the other  
10 construction permits with TV40 you would likely have turned  
11 those construction permits in.

12 A Yes.

13 Q And as of December 1991, you were still entertaining  
14 the thought and perhaps the hope that, that you would be able  
15 to sell TV40 to Mr. Shaffner, correct?

16 A Well, certainly he was one option. I still had  
17 hopes that I could reach some sort of an understanding with  
18 the cable operators so that I could build the construction  
19 permits. And I had talks myself during that time with cable  
20 operators. I had -- I know David Gardner said he had talks  
21 with cable operators.

22 And Harold Etsell had been temporarily taken off of  
23 it whenever Quality Family came in. But after Quality Family  
24 defaulted, I told him and everyone else that we need to find a  
25 viable business plan here. Let's see what we can make work.

1 And our original business plan was something that I continued  
2 to work on. I think everyone else worked on.

3 Q Well, you, you also told your people when, when the  
4 deal with Quality Family fell apart that you needed, that they  
5 should explore any expression of interest that any party  
6 might, might bring to them.

7 A Yes.

8 Q Including purchase of the, of the facilities.

9 A That's right.

10 Q Now I am correct, am I not, that by December 1991,  
11 Raystay had not started any construction of the Lebanon or  
12 Lancaster low-power stations.

13 A That's correct.

14 Q And that the reason no construction had been started  
15 was that you had not come up with a viable business plan.

16 A That's correct.

17 Q And that's the only reason why --

18 A That's the only reason.

19 Q And it is true, is it not, that as of December 1991  
20 you did not have any idea when construction would start on the  
21 Lebanon and Lancaster stations.

22 A It depended on putting a business plan together that  
23 was viable. And we didn't have one.

24 Q And, and you didn't know when it would be that, that  
25 you would develop a viable business plan, did you?

1           A     No.

2           Q     And in fact, you didn't have any idea whether you  
3 would ever develop a viable business plan.

4           A     That's correct.

5           Q     So therefore you didn't have any idea as of December  
6 1991 whether you would ever construct the Lebanon or Lancaster  
7 stations.

8           A     Our experience with TV40 convinced me that without a  
9 viable business plan it was not a proper idea to go ahead and  
10 do anything. And we worked diligently to try to make TV40  
11 into a viable entity. We worked diligently to try to find a  
12 business plan where the construction permits could be tied in  
13 with it. And nothing worked.

14          Q     And you also worked diligently to try to sell TV40  
15 and the permits.

16          A     That's correct.

17          Q     Now it is true, is it not, that at no time during  
18 the period that Raystay held these construction permits for  
19 the five new low-power stations or, or the four power, low-  
20 power stations after Red Lion was sold, that at no time during  
21 that period Raystay ever allocated any funds in its budget for  
22 the construction of those stations.

23          A     It was never any consideration given to it, because  
24 we had to have the business plan before we would know what the  
25 financial requirements were. It was not part of budgeting.

1 Q And you are the person in the company who has the  
2 final decision of what goes in and what does not go into the  
3 budget, correct?

4 A That's correct.

5 Q And so the decision not to allocate any funds for  
6 low-power construction was your decision.

7 A There was no reason to allocate funds for  
8 construction. There was no reason to even consider it in the  
9 budgeting process, because we didn't have a business plan.

10 Q But that was your determination to make.

11 A That's just good business, yes.

12 Q And, and you knew as of December 1991 that there was  
13 nothing in the budget for development of the low-power  
14 stations.

15 A That's correct.

16 Q And you knew again in July 1992 that there was  
17 nothing in the budget for development of the low-power  
18 stations.

19 A I've never stated that there was anything in the  
20 budget, no.

21 Q Now I want to turn to the subject of the, of the  
22 applications filed with the FCC in December 1991. These are  
23 the applications to extend the permits for Lebanon and  
24 Lancaster. Did those -- those applications came across your  
25 desk for your review and signature, did they not?

1           A     Yes, they did.

2           Q     And they were accompanied at that time by a note  
3 from David Gardner. Would you turn to TBF Exhibit 244 please?  
4 In exhibit -- I mean in volume 3D.

5           MR. SCHAUBLE: Your Honor, may I approach the  
6 witness.

7           JUDGE CHACHKIN: Yes.

8           MR. GARDNER: 244, yes. Thank you. I have it.

9           BY MR. EMMONS:

10          Q     Okay. You see that this is a handwritten note dated  
11 December 18, 1991 signed by David Gardner. Now this, this  
12 note accompanied the, the application that came to your desk  
13 for review and signature on that date, did it not?

14          A     Yes.

15          Q     And you understood that the purpose of these  
16 applications was to seek another 6 months' time from the FCC  
17 to construct these stations.

18          A     Yes.

19          Q     And you understood that the FCC wanted to know what  
20 you've done to construct the stations in the 18 months that  
21 you had already received on the original permits.

22          A     There was a permit, an, an extension form that  
23 accompanied this letter, yes.

24          Q     Well, would you turn to TBF Exhibit 245 please?

25          JUDGE CHACHKIN: That's a different -- no, same

1 volume.

2 BY MR. EMMONS:

3 A Okay. Yes, I have it.

4 Q And I'll tell you what these are just to orient you.  
5 These are the four applications as they were signed and filed  
6 with the FCC in December 1991. And although they're all in  
7 one exhibit, there are four of them. They're separated by  
8 blue divider pages. And my question to you is do you  
9 recognize these as the applications that you signed in  
10 December 1991?

11 A Yes.

12 Q Now you understood, did you not, when you signed  
13 these applications that the FCC wanted to know the status of  
14 construction.

15 A Yes, there are questions here about that.

16 Q And you understood also, did you not, that the FCC  
17 wanted to know the reasons for delay in commencement of  
18 construction.

19 A Yes, there's a question on that.

20 Q And, and you understood, did you not, that the FCC  
21 wanted to know what steps were being taken to remedy the delay  
22 in commencement of construction.

23 A Yes.

24 MR. EMMONS: Now I want to put before the witness a  
25 copy of the Form 307 instructions which I think everyone else

1 in the room already has. If they don't, I'll get a copy.

2 JUDGE CHACHKIN: Is this going to be an exhibit?

3 MR. EMMONS: I may or may not need to make an  
4 exhibit, Your Honor. I think it's just a small part of it I  
5 need to read in and then, and on a question.

6 BY MR. EMMONS:

7 Q Mr. Gardner, what I've just handed you is a blank  
8 copy of FCC Form 307 which contains on the back side a listing  
9 of instructions. Do you see that?

10 A Yes, I see that.

11 Q And would you focus on instruction F which says,  
12 "Applicants must explain fully: status of construction;  
13 reasons for delays in commencement or completion of  
14 construction; and detail steps being taken to remedy delays."  
15 Do you see that?

16 A Yes.

17 Q And you saw that instruction when you reviewed these  
18 applications in December 1991?

19 A No, I did not.

20 Q You did not.

21 A It's not on this form here. And I don't recall  
22 seeing it.

23 Q When you say this form here, you're referring to TBF  
24 Exhibit 245.

25 A Yes.

1 Q And you don't recall seeing instructions on the back  
2 of the Form 307 when you reviewed these applications?

3 A If it was on the form that I signed, I was unaware  
4 it was on the back and I did not, I did not know it was there.

5 Q Well, would you look at the front of the form?

6 A Yes.

7 Q TBF Exhibit 245, page 2. And when I say page 2, I'm  
8 referring to numbers that are at the lower right-hand corner  
9 of the pages on the exhibit.

10 A Yes, I see it.

11 Q All right. And, and this is the first page of one  
12 of the Form 307s that you signed, am I correct?

13 A Yes.

14 Q And in fact, that is your signature that appears  
15 down at the lower right.

16 A Yes, it is.

17 Q Okay. Now would you look in the upper left of the  
18 form near the top underneath the words "application for  
19 extension of broadcast construction permit or to replace  
20 expired construction permit." Do you see a parenthetical  
21 phrase below that?

22 A Yes.

23 Q And would you read aloud what that parenthetical  
24 phrase says.

25 A "Carefully" --



1 MR. SCHAUBLE: Objection, Your Honor. What's the --  
2 the document is in the record. What's the --

3 JUDGE CHACHKIN: Well, I'll allow it. Go ahead.  
4 You can read it aloud.

5 MR. GARDNER: "Carefully read instructions on back  
6 before completing."

7 MR. EMMONS: Now did you read that, that instruction  
8 at the top of page 1 of the form?

9 MR. GARDNER: I don't --

10 MR. SCHAUBLE: Objection, Your Honor. The record  
11 testifies that the, the witness did not complete the  
12 application.

13 JUDGE CHACHKIN: Overruled. Go ahead with your  
14 answer -- answer to the question.

15 MR. GARDNER: I'll have to ask for the question  
16 again. I'm sorry. I've forgotten the --

17 BY MR. EMMONS:

18 Q The question, Mr. Gardner, is did you read -- when  
19 you reviewed this FCC application in December 1991 did, which  
20 you signed at the bottom right-hand part of the page, did you  
21 read that admonition or instruction at the top of the page  
22 which says, "Carefully read instructions on back before  
23 completing."?

24 A I must admit that this is the first time that I was  
25 aware that sentence was there.

1 Q You, you didn't, you didn't see that?

2 A No, I didn't pick up on that.

3 Q Now are you sure you didn't see that? How do you  
4 know you didn't see that?

5 A I don't recall it.

6 Q If you had recalled seeing it, you would have read  
7 the back?

8 A I would have, yes.

9 Q And if you didn't see it, that's because you didn't  
10 read that, didn't read it carefully.

11 A I, I read the things that were inserted more than I  
12 read the printed form. I was reviewing the things that we had  
13 inserted in the page. Since I hadn't prepared the form, I was  
14 more interested in seeing that what was entered there was  
15 correct to my knowledge.

16 MR. EMMONS: Your Honor, we going to have an  
17 afternoon break?

18 JUDGE CHACHKIN: You want to take it now?

19 MR. EMMONS: It's about halfway to 4 o'clock.

20 JUDGE CHACHKIN: All right. We'll take a 10-minute  
21 break.

22 (Whereupon, a brief recess was taken from 2:30 p.m.  
23 until 2:40 p.m.)

24 JUDGE CHACHKIN: We're back on the record. Mr.  
25 Emmons.

1 MR. EMMONS: Thank you, Your Honor.

2 BY MR. EMMONS:

3 Q Mr. Gardner, do you have TBF Exhibit 245 in front of  
4 you? That's the copy of the December 1991 --

5 A Yes.

6 Q -- construction applications?

7 A Yes.

8 Q Now when, when you received these applications in,  
9 on December 18, 1991, did you carefully review the  
10 applications?

11 A Yes, I did.

12 Q And did your review include Exhibit 1 of the  
13 applications?

14 A Yes, it did.

15 Q And how carefully did you review these applications?

16 A I read the application and the first one, and I  
17 recall looking at the additional applications and saw that  
18 there were similarities between that and the first one.

19 Q So you read the first one more carefully than you  
20 read the other three?

21 A Yes, I did.

22 Q And with respect to the first one that you, that you  
23 read more carefully, I take it you did not, you did more than  
24 just skim the application.

25 A I looked at the Form 307 and the items on it that I

1 had knowledge of directly. I made sure they were correct.  
2 There were a lot of file numbers and things there that I  
3 didn't check. I had other people reviewing this. Mr. Cohen's  
4 office had helped us prepare it. David Gardner had worked  
5 with them. Lee Sandifer was responsible for reviewing them  
6 before they got to me. I think I reviewed it reasonably  
7 completely when it came to me.

8 Q With respect to Exhibit 1, did you read every  
9 sentence?

10 A Exhibit 1? Yes.

11 Q Yes. Answer was yes?

12 MR. SCHAUBLE: Does he have that form --

13 MR. GARDNER: Yes.

14 MR. SCHAUBLE: -- Your Honor?

15 JUDGE CHACHKIN: Yes, he --

16 BY MR. EMMONS:

17 Q And did you understand what each sentence said in  
18 Exhibit 1?

19 A It's fairly representative of the situation. It  
20 outlines our business plan in most of its detail. Tells what  
21 we had done. Yes.

22 Q Well, my question was did you -- when you, when you  
23 read this Exhibit 1 in December 1991, did you understand what  
24 it said?

25 A Since that time, I've been --

1 Q I'm not, I'm not asking for anything you may have  
2 learned since then. What I'm asking for is your, your state  
3 of mind at the time that you read and signed this application  
4 in December 1991. And my question is --

5 A Yes, I thought I understood it. Yes.

6 Q And did you at that time make any changes in either  
7 the application form or Exhibit 1?

8 A I don't recall making any, no.

9 Q Did you have a full opportunity to, to make any  
10 changes you wanted to?

11 A Yes, I would have.

12 Q And so I assume then from the fact that you didn't  
13 make any changes you agreed with all of the statements in  
14 Exhibit 1?

15 A Yes, I did.

16 Q You felt that all those statements were accurate?

17 A I saw no reason to disagree with any of the  
18 statements.

19 Q You felt that all the statements in Exhibit 1 made  
20 full disclosure of all pertinent facts?

21 A These pages had been prepared in conjunction with  
22 our Washington legal counsel, and they had been retained to  
23 advise us on what we needed to do to file an extension  
24 application. We relied heavily on them. David Gardner's job  
25 responsibilities were defined as being responsible for

1 preparing these. And the items that are contained here, many  
2 of them I had personal knowledge and had been working on  
3 myself. And I saw nothing that I disagreed with.

4 Q So again, I take it the answer to my question is  
5 that you did feel that the, that Exhibit 1 made full  
6 disclosure of all pertinent facts.

7 A I believe that it disclosed everything that we were  
8 advised by our legal counsel that we should state. This is  
9 only a page and a half. I believe we were going on the basis  
10 that Mr. Cohen knew what was required and was working with us  
11 to make sure that was in here.

12 Q And, and you were aware at, at this time, December  
13 1991 when you were reviewing this application, these  
14 applications, you were aware that, that misrepresentation and  
15 lack of candor were considered by the FCC to be serious  
16 offenses.

17 A Well, I certainly believe they are, yes.

18 Q And you had some experience with that subject, did  
19 you not?

20 A That's correct.

21 Q And you were aware, were you not, that the FCC might  
22 consider the omission of a, of material information or failure  
23 to disclose a material fact to be a lack of candor.

24 MR. SCHAUBLE: Objection, Your Honor, as --

25 JUDGE CHACKIN: Overruled.

1           MR. GARDNER: As I said, I relied heavily on Mr.  
2 Cohen to assist us in the preparation of this exhibit and the  
3 application. Certainly David Gardner was placed under no  
4 restrictions by me to not disclose everything that Mr. Cohen  
5 felt was needed here. And my review of it did not contemplate  
6 that there was anything omitted that was required.

7           BY MR. EMMONS:

8           Q     Well, my, my question was a little bit different.  
9 My, my question was your awareness or understanding of, of FCC  
10 policy. And my question was you were aware, were you not, at  
11 the time you reviewed and signed this, that the FCC might  
12 under its policies consider the omission of material  
13 information or the failure to disclose a material fact to be a  
14 lack of candor.

15          A     Well, Mr. Emmons, I'd like to point out that I had  
16 hired Mr. Cohen to devise a compliance for our TV40 operation.  
17 And he was -- he had implemented that to cope with this very  
18 subject. While it wasn't required in the, in the extension  
19 application for the construction permits probably, he was  
20 still the person that was applying that. And it never crossed  
21 my mind that he would have omitted something in the  
22 preparation of this that would have been required by the FCC.

23          Q     Well, without, without reference, and I'm not  
24 referring to at this point to what was in, in the application  
25 or what was not in the application. My question is your

1 understanding at that time of FCC policy. And, and the  
2 question specifically is did you not understood in your own  
3 mind at that time that the FCC would or might consider the  
4 omission of material information, whether or not there was in  
5 your application an omission, that would or might consider an  
6 omission of material information or a failure to disclose a  
7 material fact to be a lack of candor.

8       A     Well, Mr. Emmons, all I can say is I don't know  
9 whether the, the situation on the construction permit is the  
10 same as the operating situation with TV40. But Mr. Cohen was  
11 my adviser in this entire affair. We disclosed everything we  
12 were doing to them. All we had to do was ask. And certainly  
13 David Gardner knew we were operating, operating under that  
14 situation. And he had been working with Mr. Cohen. And if  
15 there was anything that wasn't disclosed it was inadvertent.  
16 It was not intentional.

17       Q     Well, did Mr. Cohen advise you that the FCC might  
18 view the omission of material information to be a lack of  
19 candor?

20           MR. SCHAUBLE: Your Honor, I'm objecting at this  
21 point. I think, I think at this point we're on the fourth  
22 reading, fourth --

23           JUDGE CHACHKIN: I'll sustain the objection. I  
24 don't think you're going to gain anything by this.

25           BY MR. EMMONS:



1 Q Mr. Gardner, did you discuss the contents of these  
2 applications, that is to say the applications in TBF Exhibit  
3 245, did you discuss the contents of them with anyone before  
4 you signed them?

5 A No, I don't believe I did. I had personal knowledge  
6 of many of the items in there. And the ones I didn't have  
7 personal knowledge of were ones that were assigned  
8 specifically to someone in the organization. So I, I don't  
9 believe I discussed it with anyone. I did review it.

10 Q You didn't -- you did not discuss it with David  
11 Gardner.

12 A No.

13 Q You did not discuss it with Lee Sandifer.

14 A I don't recall a discussion with either of them, no.

15 Q You did not discuss it with Harold Etsell.

16 A I don't recall a discussion with anyone.

17 Q You did not discuss it with FCC counsel.

18 A That's correct.

19 Q Now it would have been easy to discuss it with Mr.  
20 David Gardner, would it not, if you had chosen to do so?

21 MR. SCHAUBLE: Objection, Your Honor. What's the  
22 relevance of that?

23 JUDGE CHACHKIN: Well, I'll, I'll overrule the  
24 objection.

25 MR. GARDNER: If --